The Solicitors' Journal

VOL. LXXXIII. **Saturday, October 21, 1939.** No. 42

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

Judicial Hours.

JUST before the House of Lords rose from their judicial labours on Friday last, VISCOUNT MAUGHAM intimated that their lordships proposed, for a time at least, to begin their sittings at 10 o'clock instead of 10.30, as has long been their custom. The House thus brings itself into line in this matter with the courts in the Strand. This is by no means the first time that the hours of sitting have been changed, but in the past the trend has usually been towards a later hour for beginning work. We read in LORD CAMPBELL'S "Lives of the Chancellors" that in early days the courts began work at 7 o'clock in summer and 8 o'clock in winter. Somewhat later a change was made, and 8 o'clock was for a considerable time the hour for work being resumed. In the time of LORD HARDWICKE the working hours in court would appear to have been from 9 till 2. The practice of beginning thus early in the day was not, however, peculiar to our country; it was the same among our confrères in France. According to M. HENRI ROBERT, a former Batonnier, BERRYER, the father of the great BERRYER, used to recount the story of his first pleading before the Grande Chambre at one of the audiences "du matin qui tenaient en hiver à la lueur des bougies, à une heure qui semblerait, sans doute, cruellement matinale à nos habitudes d'aujourd'hui, puisque l'audience commencait aussitot après la messe de 6 heures, célèbre dans la salle des Pas-Perdus." M. ROBERT added that the hour, "cruellement matinale," the imposing majesty of the judges, and the fact that this was the first appearance of the young avocat before that august tribunal, so affected him that at the end of his address he fell back in a faint. This, however, did not prevent his after success in the profession, although he was to be outstripped by his son, the defender of MARSHAL NEY, who later visited England as the guest of the English Bar, on which occasion he made his famous declaration that "the arms which an advocate wields he ought to use as a warrior, not as an assassin. He ought to uphold the interests of his clients *per fas* and not *per nefas*. He ought to know how to reconcile the interests of his client with the eternal interests of truth and justice."

The Courts (Emergency Powers) Act and Small Tenements.

SIR ROLLO GRAHAM-CAMPBELL recently gave judgment, at Bow Street Police Court, in a case which involved the consideration of the question whether or not the Courts (Emergency Powers) Act, 1939, applies to small tenement cases where the evidence discloses arrears of rent. In the case before the court a warrant had been issued before the passing of the Act giving the landlord possession of the premises in question. Section 1 (3) of the Act provides (with reference to contracts made before the Act) that, subject to the provisions of the section, a person shall not be entitled, except with leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether given or made before or after the commencement of the Act) for the recovery of possession of land in default of payment of rent. According to the report in *The Times* of 12th October, the learned magistrate observed that it was possible to argue that the Act did apply to such cases where there were arrears of rent, since the above-cited subsection referred to recovery of possession in default of payment of rent. He held, however, that the fact that evidence on the case disclosed that there were arrears of rent did not bring the proceedings under the Small Tenements Recovery Act, 1838, within the description of proceedings for the recovery of possession in default of payment of rent. The point was not free from doubt, but, on the whole, the magistrate was of opinion that the Legislature had not seen fit to apply the Courts (Emergency Powers) Act, 1939, to cases under the Small Tenements Recovery Act, and that the necessary protection to tenants was to be found in the provisions of the Rent Restrictions Acts. In the result, the tenant was ordered to give up possession within fourteen days.

The Prices of Goods Bill.

FOLLOWING is a brief outline of the scheme contained in the Prices of Goods Bill, the object of which is to check war profiteering by an unjustifiable rise in the price of goods which affect the cost of living. Goods within the measure will be specified by orders made by the Board of Trade. The permitted price of such goods will be the basic price—normally the price at which the goods were sold in the ordinary course of business on 1st August, 1939—*plus* such an amount as is reasonably justified by increases in the cost of production and sale. Items of cost affecting the permitted increase in price include the price of materials, manufacturing expenses, wages and salaries, insurance premiums, transport charges, advertising expenses, and changes in the volume of business over which overhead expenses fall to be spread. Provision is made for other items of cost to be added by order of the

Board of Trade. Moreover, the Board may, if asked to do so by a representative body of traders and if such a course is thought expedient and practicable, specify by order the basic price, the permitted increase or the permitted price for any class of price-regulated goods. Appeals against a permitted price fixed by a Board of Trade order will go before a referee, who will sit with three assessors. The referee himself will be a lawyer, one assessor will be experienced in finance or accountancy, another will have technical knowledge of the trade in question, and the third will represent buyers of price-regulated goods. The proposed Act will be enforced by a Central Price Regulation Committee, assisted by local committees. Complaints will be heard by the latter, which, if of opinion that an offence justifies a prosecution, will report to the former; and this committee, if of the same mind, will request the Board of Trade to institute proceedings. Alternatively proceedings may be taken by the Director of Public Prosecutions. Where a person is prosecuted for a contravention of the Act the onus will be upon him to prove that the price charged for the goods was not more than the permitted price. The measure contains provisions designed to prevent evasion by a seller of price-regulated goods requiring as a condition of the sale that the purchaser shall buy other goods or pay for services (other than transport and insurance) in respect of the goods sold. The provisions of the Bill as drafted do not apply to foodstuffs otherwise controlled, to sales by auction, or to sales of goods for export.

Local Government: Suspension of Elections.

THE Local Election and Register of Electors (Temporary Provisions) Bill was read a third time in the House of Commons on Thursday. On becoming law the first general effect of the measure will be to suspend the borough council elections which, in the ordinary course, would have been held on 1st November, pursuant to the provisions of s. 23 (2) of the Local Government Act, 1933. This subsection, it may be recalled, enacts that the term of office of borough councillors shall be three years, and that one-third of the whole number of councillors of the borough or of each ward thereof (as the case may be), being those who have been councillors for the longest time without re-election, shall retire every year on 1st November, and that their places shall be filled by newly-elected councillors coming into office on that day. The corresponding date for the retirement of Scottish town councillors is 7th November. Provision is made in the Bill for the extension of the term of office of the existing aldermen and councillors and for the filling of casual vacancies. It is also proposed that the latest date for publishing the new register of electors shall be postponed from 15th October to 15th November. The measure is to be of a temporary character and is not to continue in force beyond 31st December, 1940, unless Parliament should later otherwise decide.

The Closing and Diversion of Highways.

THE Commons, Open Spaces and Footpaths Preservation Society has recently issued an interesting and informative pamphlet on the closing and diversion of highways by order of quarter sessions. As readers know, the common law rule as to highways is "once a highway always a highway." The public right is not lost by disuse (see *Turner* v. *Ringwood Highway Board* (1870), L.R. 9 Eq. 418) or by inclosure and subsequent holding for the full period of the Statute of Limitations (*St. Ives Corporation* v. *Wadsworth* (1908), 72 J.P. 73. Nor can the rights be released by the public. There are, however, certain ways in which the rights may be extinguished: one of them is by stopping up and diversion under the relevant statutes. The pamphlet emphasises the fact that the legality of closing or diverting highways by an order of quarter sessions depends upon the prescribed procedure being exactly followed. The procedure, it is indicated, differs in several important respects according to whether the way in question is in a rural district on the one hand or a borough or urban district on the other hand. In summarising the procedure under the various Acts concerned, this distinction has been shown by printing in italics those provisions which apply only to rural districts. The most noteworthy of these distinctions is, of course, the power vested in the rural district council and in the parish council or parish meeting to veto a county council's proposal relative to a public right of way. The procedure is briefly set out in close juxtaposition with the relative portions of the Highway Act, 1835, and the Local Government Acts of 1894 and 1933, and some well-known authorities are cited: *Rex* v. *Cambridgeshire Justices* (1835), 4 A. & E. 111; *Reg.* v. *Phillips* (1866), L.R. 1 Q.B. 648; and *Rex* v. *Essex Justices* [1908] 1 K.B. 374, among them. The pamphlet suggests that the summary may be found useful to local authorities and others concerned. Among the latter may be included practitioners who may well find the information furnished a useful starting point to such further investigation as the necessity of a case may warrant. Its dissemination among members of the public who appreciate the importance of preserving rural ways, particularly in rural areas, is still more to be desired. One of the declared objects of the society is to secure the preservation and proper maintenance of public footpaths, bridleways and other highways. The imparting of information of the kind given in the pamphlet to those principally concerned is calculated materially to further this purpose.

Rules and Orders: Petroleum.

ATTENTION should be drawn to the Petroleum (No. 1) Order, 1939, which was recently made by the Secretary for Mines and came into operation on 16th October. The order prohibits the use of kerosene or paraffin, either alone or mixed with motor spirit or Diesel oil, in any motor vehicle other than agricultural tractors and engines which are permitted to be used on roads only when engaged in farming work. It is an offence, after the date above mentioned, not only to use kerosene as fuel for a motor vehicle, but also for any person to sell or supply kerosene for use in a motor vehicle affected by the Order. Persons authorised by the Secretary for Mines and any officer of Customs and Excise are empowered to examine vehicles in which they have reason to believe that kerosene is being used as a motor fuel and to inspect premises where kerosene or mixtures of kerosene and motor spirit or Diesel oil are stored for such a purpose. It is stated that the Order has been made because, since the introduction of the motor fuel rationing scheme, considerable quantities of kerosene, including mineral vaporising oil, have been used either alone or mixed with motor spirit or road Diesel oil as a fuel in motor vehicles. There appear to be substantial stocks of kerosene in the country, but it is regarded as essential that its use should be confined to the purposes for which it is mainly employed, such as domestic cooking, heating and lighting and as a fuel for certain types of agricultural tractors and engines.

Recent Decisions.

IN *Cartier, Ltd.* v. *Woolley-Hart* (*The Times*, 7th October) HILBERY, J., held that the plaintiffs were entitled to recover the price of a necklace against a wife who, as his lordship found, had said she could pay for it in instalments as and when she received the money from her husband and was making the purchase individually and not as the agent of her husband. Judgment was given for the husband against the plaintiffs, but, as the joinder of the two defendants had been brought about by the wife's contention that she had bought the necklace as agent for her husband, the plaintiffs were held entitled to add the husband's costs to the costs they recovered from the wife.

IN *Hall* v. *Wilson and Another* (*The Times*, 14th October) OLIVER, J., held that war risk was an element to be taken into account in arriving at the appropriate amount of damages to be awarded for loss of expectation of life.

Criminal Law and Practice.

APPEAL AFTER PLEA OF GUILTY.

A TYPE of appeal which is by no means infrequent in practice is that of appeal against conviction where a plea of guilty has been entered. At Surrey Quarter Sessions, on 22nd September, the appellant, who had pleaded guilty to a charge of obtaining credit by fraud, appealed against his conviction (*R.* v. *Neill*). In his notice of appeal he stated that he was not guilty, the matter complained of was a civil debt only, and he did not understand until after sentence. He had admitted a number of similar offences, and the police had found pawn tickets and a watch on him. On 6th May, the appellant, giving the name of Fitzgerald, had visited C, and told her that he had been sent from the newspaper shop for lodgings. He untruly stated that he was working on a building in the district. On 12th May he told C: "I am sorry to disappoint you; the boss has gone to France to bury his sister and has not paid us." On 19th May he left without paying.

On being cautioned, he said: "I have been to see the lady since and have paid her. I owe one or two people money, but you can't pay if you are out of work and sleeping out."

On appeal, it was held that there may have been some doubt in the mind of the appellant as to what he was pleading to, and he was therefore permitted to proceed with his appeal against conviction. The appeal was, however, dismissed.

Normally criminal courts are unwilling to allow appeals against conviction to proceed where a plea of guilty has already been entered. There are cases, nevertheless, where appeals have been allowed to proceed and have actually been successful although a plea of guilty has been entered. Where a learned commissioner at the Central Criminal Court persuaded a prisoner to plead guilty to a charge of abduction, although the prisoner insisted that the girl whom he was alleged to have abducted said that she would rather drown herself than go home, the prisoner's appeal was allowed to proceed, and it succeeded. The learned commissioner was apparently under the erroneous impression that the offence consisted in preventing the girl's parents from knowing her whereabouts, and it was to this imaginary offence that the prisoner had pleaded guilty (*R.* v. *Alexander*, 107 L.T. 240).

A similar case occurred in *R.* v. *Ingleson* [1915] 1 K.B. 512. The appellant had pleaded guilty to an indictment charging him with stealing horses and receiving them knowing them to have been stolen. When asked whether he had anything to say why the court should not pass sentence upon him, he handed up a written statement, containing the words: "I am guilty of taking the horses not knowing them to have been stolen." He was sentenced to four months' imprisonment with hard labour. In allowing the appeal, Lord Coleridge, J., said that the recorder could not have read to the end of the statement, and added: "It is most important that a prisoner should not be misled by the plea of guilty. He clearly thought he was guilty without having any felonious intent to steal. The absence of felonious intent is inconsistent with a plea of guilty, either to the stealing or receiving. In those circumstances it is quite clear that the plea of guilty was wrongly entered and all the proceedings consequent on that plea are bad. A plea of not guilty must be entered and the case must go back for rehearing. . . ."

The effect of such a direction, as is shown in *R.* v. *Baker*, 7 Cr. App. Rep. 217, is that there has been no proper plea of guilty. The form of order allowing the appeal, as recorded in that case, was: "The Court . . . doth allow the said appeal, and doth order that the conviction and judgment be set aside and annulled, and that the appellant do appear at the next session of the Central Criminal Court and plead to and answer the said indictment, and that in the meantime the appellant be remanded in custody." In other words, the whole proceedings are treated as a nullity, and a *venire de novo* is ordered (see *Crane* v. *Director of Public Prosecutions* [1921] 2 A.C. 299).

"It will require a very strong case and exceptional circumstances," said the court in *R.* v. *Lucas*, 1 Cr. App. Cas. 61, "to induce the court to give leave to reopen a case in which the prisoner has pleaded guilty." In *R.* v. *Forde* [1923] 2 K.B. 400, at p. 403, Avory, J., went into details: "A plea of guilty having been recorded, this court can only entertain an appeal against conviction if it appears (1) that the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it, or (2) that upon the admitted facts he could not in law have been convicted of the offence charged." In *Lucas's Case* leave to appeal was refused when it was stated on behalf of the applicant that he would not have pleaded guilty had he not been so upset at the trial. In *Forde's Case* it was submitted that the plea of guilty to a charge of indecent assault where carnal knowledge of a girl under sixteen years of age was charged in the same indictment was entered by mistake because, it was contended, the appellant was under twenty-three years of age and he had, in the circumstances, reasonable grounds for believing that the girl was of or above the age of sixteen years, within the proviso to s. 2 of the Criminal Law Amendment Act, 1922. It was held that the proviso did not apply to a charge of indecent assault and the appeal was dismissed.

Where there is merely an appeal against sentence, there is nothing in a plea of guilty to prevent the appeal from proceeding. In appeals to quarter sessions this is expressly provided by s. 25 of the Criminal Justice Act, 1925. Further, it has been held, on the true construction of s. 4 (3) of the Criminal Appeal Act, 1907, that where a person pleads guilty at his trial the Court of Criminal Appeal has power to quash the sentence passed upon him and substitute such sentence as they think proper (*R.* v. *Ettridge* [1909] 2 K.B. 24). In many cases there is more hope of success on an appeal against sentence where the prisoner has pleaded "guilty" than where the prisoner has pleaded "not guilty," for, as Channell, J., pointed out in *R.* v. *Sneasby*, 2 Cr. App. Rep. 178: "One is more reluctant to interfere where the judge has heard the whole case." In that case the sentence was substantially reduced on the ground that if the learned commissioner who tried the case had had all the facts before him he would probably not have passed the sentence he did.

War and Contracts.

IV.—BUILDING CONTRACTS.

A VALUED correspondent raises certain questions relating to building contracts, with which (he rightly observes) a great number of solicitors, acting on behalf of builders throughout the country must soon be faced. These questions raise such important matters that they deserve a separate article.

(1) A, a builder, owning land, contracted with B before the war to convey to him a plot of land and erect thereon a dwelling-house, according to agreed plans and specifications. B has paid 10 per cent. deposit upon the purchase price fixed in the contract. The date of completion was fixed for the end of 1939. The house has been partly erected, but A anticipates difficulty in procuring materials to complete and also a considerable increase in cost.

(2) In the second case, the facts are the same as in the first case, except that the house was to be ready two months later, and as yet no building has begun. In the first case A anticipates some loss; in the second case the loss may well be considerable. "Are the contracts enforceable against him," our correspondent asks, "in view of the 'frustration' caused by the war?"

"The ordinary rules of law as to the effect of impossibility apply to building and engineering contracts," observe the learned authors of the title "Building Contracts" in Halsbury,

"Laws of England," 2nd ed., vol. 3, p. 224 (the late A. A. Hudson and Laurence Mead). Despite the difficulties of procuring materials and the increased expense, the builder would still appear to be bound; between the two cases no difference in principle would appear to exist.

They would fall—so it seems—within the principles of the *Blackburn Bobbin Case* [1918] 2 K.B. 467, *supra*, p. 756, and within para. 4 of the Buckmaster Committee's statement of the law:—

> "Mere increased cost of performance, unless to an enormous and extravagant extent, does not make it (*sc.*, performance of the contract) impossible. A man is not prevented from performing by economic unprofitableness, unless the pecuniary burden is so great as to approximate to physical prevention." (See Cmd. 6100, 1939, para. 4.)

The qualification is reasonable, but how it would work in practice has not yet been laid down. The only test available at present is the reasoning in the *Metropolitan Water Board Case* [1918] A.C. 119. There, it will be remembered, the contractual work was stopped by notice from the Ministry of Munitions; the interruption was so long and so great as to make the contract *when resumed* a different contract from the contract when broken off; the contract, accordingly, was held to be dissolved. In the two cases put by our correspondent there is no such administrative intervention, but it may, perhaps, be argued that where the pecuniary burden is so great as fundamentally to alter the whole character of the work, the qualification would apply; yet, even then (as the above principle declares), the increased cost must not merely be "considerable," but "*enormous and extravagant*."

In certain other circumstances the contracts mentioned by our correspondent may cease to be operative, but on the present facts these do not arise. Thus, suppose possession of the land were taken by a competent authority under the Defence Regulations, 1939. Or suppose that private building were prohibited or were restricted by way of licence under emergency statute or order. Or again, suppose that the sale of certain essential building materials were prohibited by a duly authorised act of the Executive. In such cases, it is assumed, the contract would be discharged:—

> "So, if performance of the contract is interfered with by the State to such an extent as entirely to alter its nature, the contract may cease to be operative unless such interference is brought about by one of the parties" ("Halsbury," *op. cit.*, p. 225).

The authority for the qualification is *Mertens* v. *Home Freeholds Company* [1921] 2 K.B. 526, where the builder who had already begun the work, but could not proceed with the contract without a licence from the Minister of Munitions, ceased to proceed with due diligence, with the intention (as the court found) that the licence should be refused and that he should thereby be enabled to end the contract. The licence was refused. The Court of Appeal, however, held that he could not take advantage of the intervention of the Minister of Munitions brought about by his own act. (For the general principle, see also McNair, "Legal Effects of War," p. 77.)

That this general reasoning in answer to our correspondent's questions would appear to be correct is borne out by the fact that during the last war specific power was conferred by statute upon the courts to suspend, annul or amend building contracts or to stay proceedings thereon. By s. 1, subs. (1), of the Courts (Emergency Powers) Act, 1917, where, upon an application by a party to a contract for the construction of buildings or works or for the supply of materials for any building or work entered into before 4th August, 1914, the court is satisfied that, owing to the prevention or restriction of, or the delay in, the supply or delivery of materials, or the diversion or insufficiency of labour, caused by the war, *the contract cannot be enforced according to its terms without serious hardship*, the court may, after considering the circumstances, the position of the parties and any offer for variation, *suspend or annul the contract, or stay proceedings on terms.*

By subs. (2) the court could exercise similar powers in relation to *any* contract, whatever its subject-matter, where any term could not be enforced without serious hardship owing to restrictions or directions occasioned by enactments relating to the defence of the realm or the requisitioning of property.

After the Report of the Buckmaster Committee the Courts (Emergency Powers) Act, 1919, was passed. The courts were given similar powers in relation to *any* contract, whatever its subject-matter, made before 1st January, 1917, and "alteration in trade conditions occasioned by the war" was an additional circumstance to be taken into account. For s. 1, subs. (1), of the 1917 Act a new subs. (1), to the following effect, was substituted: Where, upon application by a party to *any* contract entered into before 1st January, 1917, the court is satisfied that, owing to the *prevention or restriction of, or the delay in, the supply or delivery of materials, or the diversion or insufficiency of labour, or the shortage of shipping, or the alteration of trade conditions*, occasioned by the war, the contract cannot be enforced according to its terms without serious hardship, the court may, after considering the circumstances, the position of the parties, and any offer for variation, *suspend or annul or with consent of the parties amend the contract, or stay proceedings on terms.* (See 1939, Cmd. 6100, paras. 5-10.)

The emergency legislation of the present war contains no similar statutory relief. The Andrewes-Uthwatt Committee was appointed to consider the legal rights and liabilities of parties to contracts in respect of the subject-matter of the contract or of "something essential being destroyed or damaged by or in consequence of hostilities before the contract is fulfilled," with special reference to six classes of contract and to report what legislation, if any, was desirable. The first class refers to "the construction of buildings, bridges or ships." The Committee did not think that the causes giving rise to impossibility or difficulty of performance could logically be differentiated. "Other war causes, such as the requisitioning of materials, restriction on the use of materials and shortage of labour," do not differ, in effect, from the war causes specified (*op. cit.*, para. 13). It would be unwise, the Committee thought, to confer upon arbitrators or the courts any general power to vary the terms of contracts. If, however, there was to be any legislation on the lines of the Courts (Emergency Powers) Acts, 1917 and 1919, giving the courts power to suspend or annul any contract in cases of serious hardship, then there should, among the circumstances to be considered, be included destruction of or damage to the subject-matter, or something essential for its production or user (para. 15).

The Buckmaster Committee had rejected the idea of the *cancellation* of contracts, "for each contract, however small, was nothing but one mesh in the great net of contractual obligations in which society is bound up, and it was impossible to foresee the consequences of general cancellation" (para. 7). Nor could they recommend the imposition of a power *to vary* contracts against the will of a party (para. 9).

The Courts (Emergency Powers) Act, 1939, accordingly, is framed on different principles. No power to suspend or to annul contracts is conferred; leave of an "appropriate court" is necessary *to enforce certain remedies* for the non-payment of money and the non-performance of obligations. (See also the Possession of Mortgaged Land (Emergency Provisions) Act, 1939.) The contract remains; it is the remedy that may be suspended. If the court thinks that the person is unable immediately to pay or to perform his obligation "by reason of circumstances directly or indirectly attributable to" the war, leave may be refused or may be granted on terms (s. 1, subs. (4)). Thus the condition for

relief is easier to fulfil than the proof of the " serious hardship " required by the Acts of 1917 and 1919. Moreover, a defendant who has no defence may, at the outset of an action, instead of appearing or defending, send a " counter-notice " to the Central Office or the registry from which the writ issued, stating his desire to take advantage of the statutory protection to prevent the enforcement against him of a judgment or order (Courts (Emergency Powers) Rules, 1939, r. 8, Form No. 2 ; *supra*, p. 707).

This method of alleviating hardship is simpler and more summary than the method used in the last war. It will no doubt be more widely invoked. But there is another way which, in many cases, may be more satisfactory to both parties. In the last war—so the Buckmaster Committee observe (see para. 6 of Cmd. 6100)—

> " The large majority of business men in this country had not insisted on their strict rights against those who were in difficulties and had made a fair compromise."

Two things, that Committee thought, were clear—

> " First, that there was a general spirit of reasonableness in the commercial community, and second, that the best possible solution of the difficulties before them lay in the extension of this spirit of reasonableness."

If a plaintiff asks for leave to proceed on a judgment, the defendant will have an opportunity of showing cause why the discretion of the court should be exercised in his favour (rr. 9, 10 ; Forms Nos. 3, 4). On the other hand, the parties may well prefer—if that be possible—the extra-judicial path of " fair compromise."

(*To be continued.*)

Company Law and Practice.

The Emergency Legislation—IV. Shares and Debentures as Enemy Property.

By virtue of para. 5 (iii) of the Trading with the Enemy (Custodian) Order, 1939, every company incorporated in the United Kingdom and every company which, though not incorporated in the United Kingdom, has a share transfer or share registration office in the United Kingdom, is bound to communicate to the Custodian of Enemy Property full particulars of all shares, stock, debentures and debenture stock, bonds or other securities issued by the company which are held by or for the benefit of an enemy. The time for making such communication (fourteen days from the 18th September) has already elapsed, except that where shares, etc., are held by or for the benefit of any person who becomes an enemy after the 18th September the particulars must be communicated within fourteen days after that person becomes an enemy.

" Enemy " is defined in s. 2 of the Trading with the Enemy Act, 1939, and I do not propose to reproduce that section here ; the definition has, of course, general application for the purposes of the Act and is not confined to the case of an enemy holding shares or other securities in a company.

It will be observed that the Order requires particulars to be communicated of shares, etc., held not only by but *for the benefit of* an enemy. Section 101 of the Companies Act, 1929, prohibits the entry on the register of notice of any trust—a provision which is extended and amplified by most articles of association. It is a recognised principle of company law that a company is not bound to take notice of beneficial interests in shares, but is entitled to treat the registered shareholder as the only person interested in the shares ; no doubt in some cases a company has, in fact, notice that a registered shareholder is a trustee or nominee and that the shares are held for the benefit of some other person or persons. But, generally speaking, a company does not know that shares are held by the registered member on behalf of others, nor has it any power to compel disclosure of the fact. Accordingly, it is apprehended that in the majority of cases companies will not know or have the means of ascertaining whether shares or debentures registered in the name of a non-enemy are in fact held for the benefit of an enemy.

By virtue of para. 2 of the Order the Board of Trade are empowered by order to vest in the Custodian enemy property or the right to transfer enemy property ; such a vesting order is to be of the like purport and effect as a vesting order respecting property of the same description made by the court under the Trustee Act, 1925, and is to vest in the Custodian any property or the right to transfer any property as provided by the vesting order without the necessity of any further conveyance, assurance or document. It will be remembered that under s. 51 of the Trustee Act the court may, in certain cases, make orders vesting the right to transfer or call for a transfer of stock (which includes shares or securities transferable in books kept by any company), or to receive the dividends or income thereof. Accordingly, a vesting order made by the Board of Trade relating to shares or debentures will vest the right to transfer such shares or debentures in the Custodian, and subject to the provisions of the Order, he may transfer them to himself or to any other person (Trustee Act, s. 51 (3)).

Paragraph 6 (ii) of the Order provides that where the Custodian executes a transfer of any shares or securities which he is empowered to transfer by a vesting order, the company shall, upon the receipt of the transfer executed by the Custodian and upon being required by him to do so, register the shares or securities in the name of the Custodian or other transferee notwithstanding any regulation or stipulation of the company, and notwithstanding that the Custodian is not in possession of the certificate, script or other document of title ; but such registration is to be without prejudice to any lien or charge in favour of the company, or to any other lien or charge of which the Custodian has notice.

It will be observed that registration of a transfer by the Custodian must be effected notwithstanding any regulation of the company ; accordingly articles of association restricting the transfer of shares will have no application to transfers by the Custodian ; thus the directors could not act under an article empowering them, in their discretion, to decline to register transfers, nor could compliance be required with articles providing for shares to be offered before transfer to the other shareholders. Again, it would seem that the company could not insist on the transfer being executed by the transferee or on the payment of a fee for registration, notwithstanding that its articles so provided. Registration is not to prejudice any lien or charge which the company may have, but this provision would not entitle the company to refuse to register the transfer pursuant to the common form article empowering the directors to decline to register a transfer of shares on which the company has a lien. The preservation of charges of which the Custodian has notice implies that he can confer a title free from any charges of which he has no notice, and it will accordingly be important to give notice to the Custodian of charges on shares and other company securities which are the subject of a vesting order in his favour.

Whether or not a vesting order is made in respect of shares or debentures held by an enemy, the dividends and interest thereon must be paid to the Custodian ; for, by virtue of para. 1 (ii) of the Order, there must be paid to the Custodian any money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, by way of (*inter alia*) dividends, bonus or interest, in respect of any shares, stocks, debentures, debenture stock, bonds or other securities issued by any company. Further, such money must be paid to the Custodian in respect of securities which have become payable on maturity or by being drawn for payment, e.g., debentures or redeemable preference shares.

If shares, debentures, etc., of a company are transferred by or on behalf of an enemy, the transferee will not, except with the sanction of the Board of Trade, acquire any rights or remedies by virtue of the transfer; and the company is prohibited from taking any cognisance of or acting upon any such transfer except under the authority of the Board (see s. 5 of the Trading with the Enemy Act, 1939). The same section similarly provides that if shares or debentures are allotted or transferred to or for the benefit of an enemy subject without the consent of the Board of Trade, the allotment or transfer is to confer no rights or remedies except with the Board's sanction. ("Enemy subject," it should be noted, is not synonymous with "enemy" for the purposes of the Act (see the respective definitions in s. 3 and s. 15).) Section 5 also provides that no share warrants, stock certificates or bonds, being warrants, bonds or certificates payable to bearer, shall be issued in respect of shares, debentures, etc., registered in the name of an enemy or of a person acting on behalf of, or for the benefit of, an enemy. Here again there may arise the difficulty already adverted to, viz., that in the ordinary way a company has not nor has it the power to obtain the knowledge that a registered holder is acting on behalf of or for the benefit of another.

It has been seen that a vesting order may be made by the Board of Trade which operates to vest in the Custodian the right to transfer (*inter alia*) shares in a company. A provision of considerable interest to company lawyers is contained in para. 6 (i) of the Order to which I have referred, which is as follows:—

> "Where, in exercise of the powers conferred upon him the Custodian purposes to sell any shares or stock forming part of the capital of any company, or any securities issued by the company, in respect of which a vesting order has been made, then any law or any regulation of the company to the contrary notwithstanding, the company, may, with the consent of the Board of Trade, purchase the shares, stock or securities, and any shares, stock or securities so purchased may from time to time be re-issued by the company."

It is, of course, an axiom of company law that a company may not purchase its own shares. Such a transaction constitutes an unlawful reduction of capital and involves the return of capital to a shareholder by a method not permitted by law. The express power now given to a company, with the consent of the Board of Trade, to purchase its own shares from the Custodian may give rise to some interesting and difficult questions. The shares are available for re-issue, and until re-issue would no doubt have to be treated for all purposes as unissued shares. Would the company, however, be bound or entitled to re-issue them at par? Suppose the shares are £1 shares whose market value is 10s., at which price the company purchases 1,000 such shares from the Custodian. The company would not be able to find subscribers for the shares at par; could it properly re-issue the shares at a price of not less than 10s., on the ground that the net result would be to replace the amount (£500) by which its assets were depleted in order to effect the purchase? Conversely, if the company purchased the shares at a price above their par value, would it nevertheless be entitled to re-issue them at par, having regard to the fact that the proceeds of the re-issue would not in that case make good the capital assets employed in the purchase? The answer to these questions would appear by no means simple.

Dining terms at the Middle Temple have been suspended until further notice, and the necessary dispensations from keeping terms by dining in Hall will be granted. No awards of prizes or scholarships usually offered by the Inn will be made at present. Luncheons of a simple character will be provided in Hall daily, except on Saturdays, and the Library and Common Room will be open for the present from 10 a.m. to 4 p.m. daily, except on Saturdays.

A Conveyancer's Diary.

The Execution of Trusts (Emergency Provisions) Act.

THE very important Execution of Trusts (Emergency Provisions) Act, 1939, has now reached the statute book, and deals with some of the difficulties discussed in this column on 23rd September last.

The Act is based on the Execution of Trusts (War Facilities) Acts, 1914 and 1915. But the wording employed is not in all matters identical, and there are several deliberate changes.

The power to delegate, which the Act confers, is in addition to any other powers of delegation (s. 1 (6)). By s. 1 (1) the Act gives a power of delegation to the following classes of fiduciary person: (*a*) A trustee. This word is not defined, or its meaning restricted (save in one particular), and accordingly it comprises any sort of trustee, whether a trustee for sale or for the purposes of the Settled Land Act, or the trustee of a private trust or of a public or charitable trust. The only restriction is that no functions in relation to an implied or constructive trust may be delegated (s. 1 (3) (*b*)). (*b*) A personal representative. By s. 7 this expression is to bear the same meaning as in the Settled Land Act, 1925. By s. 117 (1) (xviii) of that Act, "personal representative" means "the executor, original or by representation, or administrator, for the time being of a deceased person, and where there are special personal representatives for the purposes of settled land means those personal representatives." The new Act also contains, in s. 1 (2), a special provision that a personal representative who delegates his functions as such may also delegate *to the same donee* "the exercise of any functions which may in the future devolve on him by reason of his becoming a trustee of the estate when the administration thereof is completed." (*c*) A tenant for life. This expression likewise bears the same meaning as it does in the Settled Land Act, 1925 (s. 7). By s. 117 (1) (xxviii) of the latter Act, "'Tenant for life' includes a person (not being a statutory owner) who has the powers of a tenant for life under this Act, and also (where the context requires) one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life." The present Act, unlike the corresponding Act of 1915, does not require a tenant for life to delegate only to the settlement trustees or one or more of them. (*d*) A statutory owner. By Settled Land Act, 1925, s. 117 (1) (xxvi), incorporated in the new Act by s. 7, "Statutory Owner" means "the trustees of the settlement or other persons who during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life."

A member of any of the classes of persons referred to has power, by s. 1 (1), "subject to the provisions of subsection (3) of this section to delegate to any person, or to two or more persons jointly, the exercise . . . of any functions vested in him as such." By s. 7 it is provided that "'Functions' includes discretions, powers and duties."

Section 1 (3) (*a*) provides that there shall be no delegation "to any person who would not as principal be competent to exercise" the delegated functions. By s. 1 (3) (*c*) and (*d*) it is provided that where there are *two* trustees, one is not to delegate to the other, unless that other is a trust corporation. As to the meaning of "trust corporation," see Settled Land Act, 1925, s. 117 (1) (xxx), and Public Trustee (Custodian Trustee) Rules, 1926, and Law of Property (Amendment) Act, 1926, s. 3, incorporated in the new Act by s. 7. Further, where there are *two or more* trustees, no one of them may delegate his functions to any other person (whether one of the trustees or not) to whom the exercise of functions has already been delegated, whether under this Act or otherwise, by the

other trustee or all the other trustees, unless the delegate is a trust corporation. These provisions differ from those in the 1914 Act, under which it was held that one of several trustees might not delegate to a co-trustee (*Re Wells and Hopkinson's Contract* [1916] 2 Ch. 289). Such a person may now delegate to a *sole* co-trustee if (but only if) such co-trustee is a trust corporation, and, if there are three or more trustees, to any one of them or to any two or more of them jointly, subject to the provisions of cl. (*d*) as to duplicate delegation. These provisions follow those of Trustee Act, 1925, s. 25, which allows delegation in normal times when a trustee is abroad.

It is expressly provided that references to a trustee in s. 1 (3) include references to a personal representative. Nothing is said about tenants for life or statutory owners, with the consequence that they are free from the restrictions of subs. (3), so that, for example, one of two joint tenants for life could, apparently, delegate to the other.

The power to delegate may be exercised in relation to the whole or any part of any period during which the person in question is "engaged in war service," and a month thereafter (s. 1 (1)). The power of attorney may be made either before or after the commencement of the period during which the donor is engaged in war service (s. 3 (1)).

The meaning of "war service" is arrived at as follows: First, s. 7 defines the expression "the period of the present emergency" as meaning "the period beginning with the first day of September, 1939, and ending with such date as His Majesty may by Order in Council declare to be the date on which the emergency which was the occasion of the passing of this Act came to an end." The section then goes on to enact that "war service" means "(*a*) service during the period of the present emergency (whether within or outside the United Kingdom) in any of His Majesty's naval, military or air forces or the nursing service or other auxiliary service of any of those forces." This provision closely follows s. 1 (2) (*a*) and (*b*) of the 1914 Act. It differs from them by including a reference to the auxiliary forces (e.g., the various women's organisations attached to the army, navy and air force) and in not requiring any of the persons concerned to be abroad. Further, "war service" means "(*b*) any other service during that period (whether within or outside the United Kingdom) in any British ship; (*c*) any other work or employment during that period outside the United Kingdom in connection with the present war." Both of these provisions are new and the latter of them appears to be very wide indeed, since almost all activities in war-time are "in connection with the present war."

In addition to the power to delegate while the person delegating is on war service, any member of the classes of fiduciary person referred to in s. 1 (1) is also allowed to delegate, though not on war service, "in relation to any period during which—(*a*) he is outside the United Kingdom; *and* (*b*) for any reason connected with the present war it is not reasonably practicable for him to return to the United Kingdom" (s. 1 (5)). The subsection seems not to allow delegation in many cases in which it would not in any case be possible under the Trustee Act, 1925, s. 25, but its effect is to allow delegation in such cases under the terms of this Act which are less expensive and less onerous to the person who delegates. The subsection would cover (among other things) the case of prisoners of war or internees in neutral countries referred to in the 1914 Act, s. 1 (2) (*c*), and not otherwise referred to in the new Act. The position of prisoners of war is not, however, as satisfactory under this Act as under the 1914 Act. The old Act included them as being "on war service," with the consequence that a power of attorney executed by one of them when called up continued to operate after he was captured. The new Act does not say they are on war service, with the consequence that their delegates, if appointed for the period of the donor's war service and a month thereafter, cease to have authority to act, unless the document of appointment goes on to exercise the right to delegate under s. 1 (5). It may be worth consideration whether the law could not usefully be amended so as to correspond with that which was in force on this point from 1914–1918.

The power to delegate must be exercised by power of attorney (s. 1 (4)) and the instrument is to be attested by at least one witness: s. 3 (1). If, and so far as, the power of attorney confers power to deal with any interest in or charge on land, it, or the material parts, or a certified copy thereof, are to be filed at the Central Office: s. 1 (4), and Law of Property Act, 1925, s. 125. If the land is registered land, the filing is to be at the Land Registry, and if the instrument comprises both registered and unregistered land it is to be filed at the Central Office and an office copy filed at the Land Registry: L.P.A., s. 125 (1). A purchaser is entitled to the instrument, or the material parts, or a copy thereof, delivered to him free of expense: *ib.*, subs. (2). It is also provided by s. 1 (4) of the new Act that the Judicature Act, 1925, s. 219, is to apply. By that section any instrument creating a power of attorney, the due execution of which has been verified by affidavit, statutory declaration or other sufficient evidence, *may* be filed at the Central Office. After it is so filed any person may search for and inspect it and have an office copy.

The donor of a power of attorney under the new Act is given an unprecedented protection against proceedings for the defaults of the donee. By s. 2 (1) it is enacted: "In any proceedings brought against the donor of a power of attorney" (i.e., a power given under s. 1; see s. 7) "in respect of any act or default of the donee of the power, it shall be a defence for the donor to prove that the donee was appointed by him in good faith and without negligence." No such provision appeared in the Acts of 1914 and 1915, and exactly the opposite is provided by the Trustee Act, 1925, s. 25 (2), in connection with attorneys appointed under that section, though s. 23 (1) is said by the learned editors of "Wolstenholme" (in a note on s. 25 (2)) to alter its effect where the agent is employed in good faith.

By s. 2 (2) of the new Act the donee is placed in exactly the same position in exercising the functions delegated to him as if he were the donor, and by s. 4 the donee is empowered to delegate the right to transfer inscribed stock, notwithstanding the maxim "*delegatus non potest delegare.*"

There are various most important provisions, mostly following the Act of 1915, regarding the position of the donee of the power of attorney. By s. 3 (3) and (4) a statutory declaration by him that the donor is, or was at any specified date, on war service, or was abroad and not reasonably able to come home because of the war, or that in any transaction the donee is acting in the execution of the trust or the administration of the estate, is *conclusive* evidence of the fact stated in favour of a person dealing with the donee. Moreover, in favour of anyone dealing with the donee, any act done or instrument executed by the donee is valid, notwithstanding that the power of attorney has been revoked by the act of the donor or by operation of law, unless the person dealing with the donee had, at the time of the transaction, actual notice of the revocation of the power: s. 3 (2). This provision is of vital importance in times when the donor may disappear for a long period during which it is unknown whether he is alive or dead, since his death would revoke the power. In the absence of s. 3 (2), moreover, it would be difficult to deal at any time with the donee of a power, since there is often no recent positive news of persons at the war, and what news there is may become out of date at any moment. It is further provided by s. 6 that "no person shall be deemed for the purposes of this Act to have actual notice of the death of any other person by reason only of a report to the effect that that other person is missing, or is missing and is believed to have been killed, unless the death

of that other person has been presumed by order of a court of competent jurisdiction and the person in question has notice of the order." These provisions are most valuable and important, and it is submitted that they ought also to be made to apply to all powers of attorney executed by persons who would, in their capacity as fiduciary persons, be capable of delegating under this Act. In relation to such persons' private affairs the absence of such provisions may cause great inconvenience.

Finally, turning to an entirely different point, the Act deals with the case of infants entitled beneficially to land, either absolutely or so that if of full age the infant would be a tenant for life or have the powers of a tenant for life. In such a case, under Settled Land Act, s. 26, the settlement trustees or the personal representatives, as the case may be, have all the powers of a tenant for life and of the settlement trustees. If, then, the infant dies (*a*) while engaged in war service, or (*b*) when outside the United Kingdom and not reasonably able to return because of the war, it is provided that things done under Settled Land Act, s. 26, are to be valid in favour of any person who had not, at the time when the act was done or the instrument was executed, actual notice, as defined by s. 6, of the infant's death (s. 5).

It is again rather difficult to see why the protection accorded by s. 5 should be confined to this one class of case. A beneficiary under a trust, whether of realty or personalty, and whether or not the beneficiary is an infant, may not be distinctly heard of for a long period, and may in any case die after last communicating with the trustees. If in such a case the trustees act on the footing that he is alive, whereas really he is dead, great inconvenience may be caused, and it is respectfully submitted that the Legislature might well consider whether the provisions of s. 6 could usefully be made to apply to sets of circumstances other than those covered by the Execution of Trusts (Emergency Provisions) Act.

NOTE.—Considerable confusion appears to exist regarding the present statutory provisions in relation to building society mortgages, especially where the mortgagor has been called to the colours. I propose to deal fully with this matter next week.

Landlord and Tenant Notebook.

L.T.A., 1927, s. 18 (1), and Fixed Sums.

IN *Moss's Empires, Ltd.* v. *Olympia (Liverpool), Ltd.* (1939), 83 SOL. J. 746, the House of Lords allowed an appeal from the Court of Appeal, and restored the judgment of Hilbery, J., in a case in which the question was whether a particular covenant was avoided by L.T.A., 1927, s. 18 (1).

The subsection enacts: "Damages for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease . . . shall in no case exceed the amount (if any) by which the value of the reversion . . . in the premises is diminished owing to the breach of, etc." In the recent case, the ultimately successful claim was brought under an auxiliary covenant obliging tenants to expend so much a year in performing their repairing covenants or to pay the difference. I will discuss the details later.

The lease containing these covenants was made before the passing of L.T.A., 1927, and though the need for legislation of this kind had been talked about for many years, one cannot assume that it was present in the minds of those responsible for drafting this particular instrument in October, 1934. But it is pertinent to recall that this "Notebook" has from time to time discussed the possible effect of covenants of this or of similar nature, having regard to the enactment in question.

The first occasion was in the issue of 8th July, 1933 (vol. 77, p. 479). An attempt was made to estimate the effect of a covenant in a lease (made since 1927) which concluded with a proviso that the tenant should, on the last quarter-day before the expiration of the term "pay in lieu of dilapidations other than wanton damage the sum of . . ." and that this should be accepted by the landlord covenantee in full and final satisfaction. The conclusion I came to at the time was that if the premises were out of repair at the end of the lease, but repairs would cost less than the amount specified (or if for any other reason that amount exceeded the amount by which the value of the reversion was diminished), a claim to enforce it would not succeed. This view was based on the proposition that the proviso either sought to assess what must be either a non-existent or an unenforceable liability. It should be noted that the payment agreed to was expressly described as "in lieu of dilapidations."

A few years later, *Plummer* v. *Ramsey* (1934), 78 SOL. J. 175, illustrated the effect of a different device. (For discussion, see vol. 80, pp. 140, 220.) The covenant sued on referred only to an obligation to paint and decorate in the last year, contained in a repairing covenant. It provided that the lessor might at his option elect that the lessee should at the expiration of the tenancy pay to the lessor a specified sum in lieu of painting and decorating the demised premises in the last year; this sum was to be payable when the election was notified, and was to be accepted in full satisfaction and discharge of all liability and obligation of the lessee for dilapidations. The lessor gave what was held to be due notice of his election to recover the specified sum and sued for it.

Branson, J., held that the claim was neither for a penalty nor for liquidated damages, and was recoverable under the option.

In the recent case (*Moss's Empires, Ltd.* v. *Olympia (Liverpool), Ltd.*) the position was rather more complicated. The landlords covenanted to do structural repairs, while the tenants entered into a number of covenants to effect other repairs. Between the sub-clauses containing the third and fifth of these came a covenant, "in the performance of the covenants in sub-clauses (iv), (v), (vi) and (viii) herein contained to expend during each year of the said term on such repairs and decorations a sum of £500" (which was less than one-sixth of the annual rent), "and at the end of each year . . . to produce to the lessors evidence of such expenditure or to pay to them at the end of each year a sum equal to the difference between the amount so expended and £500." The action was brought for three years' differences of the kind indicated (the amounts being agreed).

Lord Atkin's speech may be summarised as follows. The claim lay in debt, for a fixed sum; the action was not for breach of covenant to repair. The amount of damages for breach of the latter did not determine the amount to be paid; the amount spent in performing them was what mattered. The sum was payable whether the covenants were broken or not, and was not meant to be a substitute for damages.

This serves to bring home to us certain features of covenants to repair. A lease or tenancy agreement is a contract, and parties to a contract contemplate its performance rather than its breach; an ordinary covenant to repair imposes an obligation which is in form remedial; but even if premises are in an excellent condition when the term begins, common sense tells us that the covenant is bound to come into play. True, when there is a "fair wear and tear" qualification, it might—especially since the decision in *Taylor* v. *Webb* [1937] 2 K.B. 283; 81 SOL. J. 137 (C.A.)—be suggested that a covenant to spend so much in repairs every year was repugnant; but unqualified covenants, and those which provide for painting at stated intervals, obviously contemplate expenditure by the covenantors.

From an economic point of view, the covenant sued on in the recent case does not strike one as suitable for ordinary leases of ordinary properties. It may be that in the case of modern cinematograph theatres the landlord's interests will be well served if the tenant is encouraged to lavish money on repairs and decoration. But in many cases, it would merely put the covenantor in the position of the hero of "Brewster's Millions"; and much would depend on whom he preferred to benefit, his landlord or his builder.

But as regards excluding the application of L.T.A., 1927, s. 18 (1), the covenant would appear to be as successful as that adjudicated upon in *Plummer* v. *Ramsey*, *supra*. It substitutes one obligation for another, and there can be little doubt that it would be fully enforceable even if the premises concerned were about to be pulled down. When the "Notebook" of 22nd February, 1936 (vol. 80, p. 140), compared the *Plummer* v. *Ramsey* instrument with that discussed in the issue of 8th July, 1933, and referred to earlier in this article, it was pointed out that the latter merely measured and re-named an obligation (of the kind affected by the Act), while the lease in *Plummer* v. *Ramsey* substituted, at the lessor's option, one obligation for another. Lord Atkin's observations in *Moss's Empires, Ltd.* v. *Olympia (Liverpool), Ltd.* tend to support this view; for his lordship emphasised that the sum payable "was not intended as a substitute for damages." Whereas the covenant first discussed in the "Notebook" actually used the words "in lieu of dilapidations."

Of course, in order to avoid L.T.A., 1927, s. 18 (1) in this way, the covenantee will always have to limit his rights or alternative right to an agreed specific or ascertainable sum of money. Nevertheless, it has now been clearly demonstrated that in spite of the Act, landlords will occasionally be able to obtain money, ostensibly for repairs, and use it towards defraying the cost of demolition.

Our County Court Letter.

LENGTH OF TITLE TO PROPERTY.

In *Scudamore* v. *Smith & Lacey and Franklin*, recently heard at Chippenham County Court, the claim was for £1 as damages for trespass. The plaintiff's case was that he was the owner of a house, occupied by the second defendant, under a title going back to 1751. Having been wrongfully dispossessed, the plaintiff had erected in the garden of the house a sign-board, on which was exhibited a notice that he was the rightful owner of the property. The sign-board, however, had been torn down and burned by a member of the second defendant's family, purporting to act on the authority of the first defendants. The defence was that the title deeds of the first defendants showed that the property was purchased in 1919 and no rent had been paid to the plaintiff or to his father or grandfather. His Honour Judge Kirkhouse Jenkins, K.C., observed that, although the plaintiff had produced certificates of marriage and birth, and also wills dating back 150 years, there was no document showing that any occupant of the land, for the last fifty years, had ever regarded the plaintiff or any member of his family as entitled to the rents and profits of the land. Judgment was given for the defendants, with costs. It is to be noted that, although the Limitation Act, 1939, received the Royal Assent on the 25th May, 1939, it will not come into force until the 1st July, 1940. Under s. 4 (3) thereof no action shall be brought by any . . . person to recover any land after the expiration of twelve years from the date on which the right of action accrued. The period will therefore be the same as under the Real Property Limitation Act, 1874, s. 1, at present in force.

JOHNE'S DISEASE IN CATTLE.

In a recent case at Kidderminster County Court (*Bennion* v. *Halford*) the claim was for £12 18s., as damages for breach of warranty. The plaintiff's case was that he had bought a cow and calf at the cattle market, and the auctioneer, acting on behalf of the defendant, had stated that the cow was "warranted right and straight." The defendant had supplemented this by a verbal warranty to the same effect. The cow was bought on the 14th February, but, on the 17th February she was apparently suffering from Johne's disease. On the 24th February the calf died of contagious white scour. A veterinary surgeon gave evidence that the disease was in an advanced stage on the 5th March, and the cow must have had it when sold. The plaintiff's evidence was that he had not seen any conditions of sale on the day of the sale, but had inspected them subsequently. On the 22nd March the cow was sold for £2. The defence was that the conditions of sale had been exhibited in the market for eight or nine years, and all transactions were subject thereto. The only warranty was that dairy animals were right and straight in the teats and udder. Any defect in other respects was outside the warranty. His Honour Judge Roope Reeve, K.C., observed that it was immaterial whether the plaintiff was aware of the conditions of sale. The business of a cattle market was only possible under general conditions of sale. If a buyer wished to know them he should acquaint himself with them beforehand. The alleged verbal warranty would have been of no assistance to the plaintiff, as it was also subject to the terms of the general conditions. No complaint had been made at any time about the state of the cow's teats and udder. The result was that there had been no breach of the warranty. A layman might think that the warranty meant that the animal would not die before reaching home, but this was not the effect of the conditions. The latter appeared to be hard on a buyer, but were apparently acceptable to the auctioneers, the National Farmers' Union, and others experienced in such matters. Judgment was given for the defendant, with costs.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Citizens' Advice Bureaux.

Sir,—I enclose carbon copy of letter [set out below] I have to-day written to our Law Society, which to a great extent speaks for itself.

This move by the authorities (whoever they may be) seems to me to be a dangerous precedent which could quite easily be continued after the war to the serious detriment of the many thousands of the profession who have spent time and money in qualification for advising lay people in legal matters.

The fact that there is a war on seems to me all the more reason why, in one line at any rate, confusion and muddle (which can arise through the ministration of unqualified persons) should be avoided.

What do others in the profession think about it?

Bradford. JOHN TREWAVAS.
6th October.

The Secretary,
The Law Society,
142, Newtown Road,
Newbury, Berks.

Bradford.
6th October, 1939.

Dear Sir,—I understand that last night and the night before information was broadcast over the radio (Midland Regional) that Citizens' Advice Bureaux were being set up all over the country for giving advice to people who need it and on the filling up of forms, etc., to be run by the local authorities and social welfare societies. No restriction was imposed as to the means of those seeking advice, for the bureaux are to operate (*inter alia*) for the benefit of business people.

I should like to know to what extent our Society has been consulted or what steps it is taking to ensure the public shall be advised only by those who have proper legal training, and/or that any such societies or local authorities do not recommend any particular solicitor to the exclusion of others in matters which still must be handled by our profession.

Are we to understand that henceforth advice (legal and otherwise) will be dispensed free to all classes of the public by welfare societies and local authorities?

It seems to me that such move, unless solicitors are definitely employed for the purpose, not only renders our profession redundant to a great extent, but that it is not really in the best interests of the public for its members to be advised on legal points by persons not wholly trained to the task.

I thought I should write you this letter in case the point had not yet come to your notice, and so that you may be able promptly to take the appropriate steps with the requisite Government Department or Departments to ensure the mutual benefit of the public and our profession.

Yours truly,
JOHN TREWAVAS.

[Since receiving the above letter, a copy of the reply thereto from the Secretary of The Law Society has been sent by our correspondent. In his reply the Secretary states that a proposal was received by the Council from the Soldiers', Sailors' and Airmen's Families Association that committees should be set up over the country to give legal advice to the dependents of men serving with H.M. Forces. The Council have referred the matter to the Associated Provincial Law Societies for their views. In conclusion, the Secretary points out that no doubt the Citizens' Advice Bureaux and local authorities will make arrangements with properly qualified persons to give legal advice, when such advice is desired.—ED., *Sol. J.*]

Solicitors in War Time.

Sir,—One notices the increasing amount of legislation affecting solicitors in regard to their accounts and discipline with the very proper object of keeping up the high standard of the profession, but it is regrettable to see the increasing number of rules and regulations which tend to exclude the legal profession from right of audience. There have been two rather outstanding instances recently in the Tribunals for Enemy Aliens and in the National Services (Armed Forces) Act, 1939. Though nothing is mentioned in the latter Act to exclude solicitors and counsel from rights of audience before committee and umpire, yet the Rules under the Act expressly do so.

These committees and umpires will in the main deal with men who desire postponement of service for "hardship" reasons, and one can imagine that it is for these circumstances precisely that the services of the legal profession would be required.

Furthermore, as normal legal business is bound to suffer greatly during wartime, it seems hardly fair to reduce further the opportunities of making a livelihood.

It would be interesting to know the reasons for this course having been adopted, and whether The Law Society can do anything on the matter.

Manchester, 2. WALTER WOLFSON.
13th October.

Cutting and Sale of Growing Trees.

Sir,—I am glad to see that the contributor of your "Conveyancer's Diary" has again referred to the absurdity of retaining the old common law definition of timber for the purposes of settled land. I dealt with this in an article on "Timber Estates" in the SOLICITORS' JOURNAL last year (p. 264), and described it as an anachronism which should be abolished, so as to make such a decision as *Re Harker* [1938] Ch. 323, impossible in the future. Timber, as now understood, is defined in two different ways in ss. 48 and 49 of the Settled Land Act, 1925, but in s. 66 it still retains its old common law meaning limited to oak, ash and elm. The rule is due to the fact that 300 years ago, when it was made, these were the only trees producing native timber, i.e., wood of commercial value. The law in this respect should be altered without further delay, though rights under existing settlements must be preserved, and a tenant for life should be allowed to retain the proceeds of annual "thinnings" and coppice.

Lincoln's Inn, W.C.2. H. LANGFORD LEWIS.
16th October.

Reviews.

Notable British Trials.—Trial of Field and Gray. Edited by WINIFRED DUKE. 1939. Demy 8vo. pp. vii and 302. Illustrated. London and Edinburgh: William Hodge & Co., Ltd. 10s. 6d. net.

The sordid story of the murder of Irene Munro, a London typist on holiday, by two seaside undesirables whose acquaintance she had casually made, does not provide pleasant reading. The paltriness of the whole setting of the crime, its brutal pointlessness, completely exclude any gleam of that sinister glamour which sometimes attends the shedding of blood. In these circumstances the editress of this latest addition to a series of national repute has shown uncommon skill in handling her introduction. The sequence of events, complicated as it was by the subterfuges, the lies and the evasions of the accused, is so smoothly unfolded and the links in the chain of detection are so finely joined that the narrative must hold the interest of all who study, whether in a professional or an amateur capacity, the methods of police work in relation to the law of evidence. It should be added that those profounder readers who go beyond the introduction and follow the full verbatim record of the proceedings will realise the patient analysis which drew from that mass of contradictory statements so coherent and well ordered a summary.

Books Received.

Loose-leaf War Legislation. Edited by JOHN BURKE, Barrister-at-Law. Part I. London: Hamish Hamilton (Law Books), Ltd. 5s. per part, net. Special subscription price for six parts, 30s. net, including loose-leaf binder and postage.

Partnership Law. By D. F. DE L'HOSTE RANKING, M.A., LL.D., ERNEST EVAN SPICER, F.C.A., and ERNEST C. PEGLER, F.C.A. Sixth Edition. 1939. Edited by WALTER W. BIGG, F.C.A., F.S.A.A. Medium 8vo. pp. xv and (with Index) 174. London: H. F. L. (Publishers), Ltd. 7s. 6d. net.

Obituary.

DR. WALTHER BURCKHARDT, LL.D.

Dr. Walther Burckhardt, LL.D., Professor of International Legislation at the University of Berne, has died in Berne at the age of sixty-eight. For some time he was legal adviser to the Swiss Federal Government, Legal Counsellor to the League of Nations, and a member of the Hague Arbitration Court. He also had a great reputation as a jurist.

MR. M. WATERLOW.

Mr. Mark Waterlow, Barrister-at-Law, died on Tuesday, 10th October, at the age of sixty-six. Mr. Waterlow was called to the Bar by the Inner Temple in 1898.

To-day and Yesterday.

Legal Calendar.

16 October.—On the 16th October, 1660, Henry Marten, the regicide, was tried at the Old Bailey for his part in the death of Charles I. He behaved with courage and self-possession and, though he admitted what he had done, he said: "I think His Majesty that now is, is King upon the best title under Heaven, for he was called in by the representative body of England." Thus even then the stout republican impliedly denied the hereditary right. Though he was convicted, Charles II spared his life, and he remained in not very rigorous confinement in Chepstow Castle.

17 October.—Problems of non-intervention are not a creation of our own generation. In 1896 civil war was raging in Crete, then under Turkish sovereignty; public opinion in Greece was strongly on the side of the insurgents, and unofficially supplies and volunteers poured into the island to assist them. At Athens, on the 17th October, there ended a court-martial on several young officers who had deserted their regiments there to join the fighting. Everyone sympathised with them and they were acquitted by four votes to one.

18 October.—On the 18th October, 1876, Mr. Justice Archibald died at his home at Porchester Gate, Hyde Park, at the age of fifty-nine.

19 October.—On the 19th October, 1769, Dr. Johnson and Boswell were naturally thinking about hanging, for their friend the scholar Baretti was awaiting trial for stabbing a man to death in the Haymarket, having struck out blindly with a penknife when attacked by a gang of roughs. Thus they talked: "Johnson: We have a certain degree of feeling to prompt us to do good; more than that Providence does not intend. It would be misery to no purpose. Boswell: But suppose now, sir, one of your intimate friends were apprehended for an offence for which he might be hanged. Johnson: I should do all I could to bail him and give him any other assistance, but if he were once fairly hanged I should not suffer. Boswell: Would you eat your dinner that day, sir? Johnson: Yes, sir, and eat it as if he were eating it with me."

20 October.—Next day, the 20th October, Baretti was tried at the Old Bailey before Mr. Justice Bathurst. Boswell wrote: "Never did such a constellation of genius enlighten the awful Sessions House emphatically called Justice Hall—Mr. Burke, Mr. Garrick, Mr. Beauclerk and Dr. Johnson—and undoubtedly their favourable testi mony had great weight with the court and jury. Johnson gave his evidence in a slow, deliberate and distinct manner which was uncommonly impressive." Baretti was acquitted.

21 October.—In September, 1751, the judges at the Old Bailey received a painful surprise. Philip Gibson, capitally convicted of a street robbery, was brought up to receive His Majesty's gracious pardon on condition that he should be transported for fourteen years, but declined the favour, declaring that he would rather be hanged. The judges reasoned with him for a while and then put him back to the next Sessions. By the 21st October he had thought better of his resolution and when brought into court accepted the commutation.

22 October.—On the 22nd October, 1768, John MacLeod, a young glazier less than twenty years old, was condemned to death at the Old Bailey for the murder of William Stoddart, Keeper of the Clerkenwell Bridewell, who had been stabbed to death on his way home from Islington. The boy had an honest and open countenance and his crime arose out of the first robbery he had ever actually attempted, though he had often gone out with a bad companion for that purpose. He had not meant to kill his victim but had found himself too vigorously resisted.

The Week's Personality.

Mr. Justice Archibald was not exactly a colourful personality, but his career was interesting and unusual. His father was Master of the Rolls in Nova Scotia, where he was born in 1817. He, too, qualified to practise there as a barrister in 1837, but a visit to Europe in the following year gave him new ambitions and he joined the Middle Temple in 1840. First he became a special pleader, gaining an unusually high degree of mastery over that then abstruse art. This stood him in good stead when several years later he came to the Bar and joined the Northern Circuit, for though a sound, accurate and learned lawyer, he was not a particularly persuasive advocate. In 1872 he succeeded Mr. Justice Hannen, who had moved from the Queen's Bench to the Probate and Divorce Court. The profession approved of his promotion and he justified it fully in the short time he exercised judicial functions. Besides his purely legal qualifications he displayed kindness, dignity and patience, winning the confidence of suitors and of the Bar. In 1875 he was transferred to the Common Pleas. Later, on the fusion of the courts by the Judicature Act, he acquired the status of a Justice of the High Court.

Qualifications for War.

There is a story going about of how an unspecified K.C., said to be eminent, approached the War Minister with an offer of services, saying, when asked what post he considered himself suited to fill: "I must leave that to you. You are aware of my qualifications." "That's just it," was the reply. "You see we do not intend to cross-examine the Germans, but to fight them." The difficulty recalls the lively account which Lord Chancellor Campbell has left us of the doings of his fellow lawyers in the various volunteer bodies raised when Napoleonic invasion threatened the nation. He tells of Lord Erskine drilling his men in the Temple Gardens. "He gave the word of command from a paper which he held before him and in which I conjectured that his 'instructions' were written out as in a brief." Campbell also recalled his friend, Will Harrison, adjutant of the Bloomsbury and Inns of Court Association, who talked strategy to his colleagues and law in the regimental messes so that he was known as "a General among Lawyers and a Lawyer among Generals." His, too, was the tale of the attorneys who joined the ranks of the volunteers, but who, when the order was given to charge, immediately wrote down 6s. 8d.

Previous Experience.

If anyone had asked Erskine what were his qualifications for military employment he could have put forward a good deal more than an aptitude for cross-examination, for he had spent seven years before coming to the Bar as a junior officer in the Royal Scots. During part of that time he had been stationed at Minorca, then a British possession, displaying the versatility of his powers by deputising for the regimental chaplain. In after years he liked to recall the sermons he composed and the extempore prayers he delivered with great solemnity from the drum-head. At Minorca he engaged in a systematic study of English literature and before resigning his commission he found time to publish a pamphlet entitled "Observations on the Prevailing Abuses in the British Army arising from the Corruption of Civil Government with a Proposal to the Officers Towards obtaining an Addition to their Pay." Army life with its limited prospects was thoroughly uncongenial to him, and it was a lucky day when a chance visit to an assize court set him off on another career. Mr. Baron Watson, who held a cavalry commission during the Peninsular War, never found it necessary to return to arms after he had assumed the gown. Mr. Baron Rigby, who reversed the process, and fought in the English civil war after half a lifetime at the Bar, surprised everyone when he won a battle.

Notes of Cases.

Judicial Committee of the Privy Council.

Francis, Day and Hunter, Ltd. *v.* Twentieth Century Fox Corporation, Ltd., and Others.

Lord Thankerton, Lord Russell of Killowen, Lord Wright, Lord Romer, and Sir Lyman Poore Duff (Chief Justice of Canada). 12th October, 1939.

Copyright—Title of Song used for Film—No reference to Song in Film—Whether an Infringement—Whether Passing Off.

Appeal from a decision of the Court of Appeal, Ontario reversing a decision of McEudy, J., granting the appellants, Francis, Day & Hunter, Ltd., damages for alleged infringement of copyright.

The appellants owned the copyright in the song "The Man Who Broke the Bank at Monte Carlo." The alleged acts of infringement consisted in the distribution and renting by the first respondents, and the exhibiting in public at cinematograph theatres of the second respondents, of a film entitled: "The Man Who Broke the Bank at Monte Carlo." It was admitted by the appellants that neither the music nor the words of the song were advertised or reproduced in the film by the respondents. (*Cur adv. vult.*)

Lord Wright, giving the judgment of the Board, said that the action included also a claim for infringement of literary copyright and for passing off. The claim for infringement of the appellants' performing right in the song failed in law and on the facts. The appellants' claim was expressly based on the Imperial Act of 1842, which gave to the owner of copyright a right to protection in Canada; but it was contended for the respondents that the appellants could not in any event claim the protection of that Act because they failed to publish on each copy of the song the printed notice required by the Copyright (Musical Compositions) Act, 1882. It was true that the Act of 1882 did not in terms extend to Canada, but, in their lordships' judgment, it did so by necessary implication and effect. Thus the Act of 1842 could be relied on where performing right was in question only as qualified by the Act of 1882. On that narrow ground of law the appellants must fail. As to the facts, the mere circumstance that what was the title of the song was shown on the screen at the beginning of the film did not constitute a performance of the song. As to literary copyright, assuming, but not deciding, that the appellant company were entitled to the copyright in Canada which they claimed, they were not entitled to succeed in their claim that the respondents had infringed that right. The copying complained of was the use of the title, and that was too unsubstantial in the facts of this case to constitute an infringement. Counsel for the appellants, however, relied on the addition in 1931 to s. 2 of the Canadian Copyright Act, 1921, of the following definition: "(v) Work shall include the title thereof when such title is original and distinctive." But that definition did not, in their lordships' opinion, mean that the title of a work was to be deemed a separate "work." When that definition was read with s. 3 of the Act of 1921, the result was that to copy the title constituted infringement only when what was copied was a substantial part of the work. As to the claim for passing off, it seemed inconceivable that when a member of the public bought a ticket for the motion picture, he imagined that he was going to hear a performance of the familiar song. The two things were completely different and incapable of comparison in any reasonable sense. The appeal must be dismissed.

Counsel: *K. E. Shelley*, K.C., and *P. Stuart Bevan*; *A. J. Thomson*, K.C., and *E. J. Macgillivray*.

Solicitors: *Syrett & Sons*; *Blake & Redden*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

House of Lords.

Reardon Smith Line, Ltd. *v.* Black Sea and Baltic General Insurance Company, Ltd.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright and Lord Porter. 29th June, 1939.

Shipping—Charterparty—Call at Port for Re-fuelling—Deviation—What Evidence Admissible.

Appeal from a decision of the Court of Appeal (82 Sol. J. 393; 54 T.L.R. 760 (Slesser and Clauson, L.JJ.; Greer, L.J., dissenting)), reversing a decision of Goddard, J., in favour of the plaintiff shipowners.

The appellants were the owners of an oil-burning steamer which was chartered to go to Poti, a Black Sea port, to load a cargo of manganese ore and take it with all convenient speed to Sparrows Point, Baltimore, U.S.A. The charterparty provided that general average should be payable according to York-Antwerp Rules, 1924, and that a guarantee for the cargo's liability for general average contribution should be given by the respondent insurance company. It also provided that the steamer had liberty to call at any port or ports, in any order, or places to bunker. The steamer went to Poti and there loaded a cargo in accordance with the charterparty. She then went to Constantza to take in oil fuel for the Atlantic voyage. At Constantza she stranded on a reef, and part of the cargo was jettisoned. In bringing this action claiming general average contribution from the respondents, the appellants admitted that Constantza was not on the direct geographical route from Poti to Sparrows Point, but the evidence showed that from 1930 to 1933 oil-burning steamers leaving Black Sea ports frequently called at Constantza for bunkers because larger supplies of cheap oil were available there. The respondents resisted the claim against them on the ground that the vessel had deviated from the stipulated voyage.

Lord Wright said that the respondents' case was that what was done in calling for bunkers at Constantza was not a deviation or departure from the contract voyage but within the contract voyage, because the vessel was pursuing a usual and reasonable commercial route for carrying out that particular adventure. Their contention was that the charterparty words "shall with all convenient speed proceed to . . . Sparrows Point" imported by necessary intendment that the vessel should proceed by a usual and reasonable route, and that the ascertainment or identification of what was a usual and reasonable route depended on evidence, since the court, not being possessed by itself of expert navigational or mercantile knowledge, must, if need be, call in aid such evidence. This was because the contract did not write out in full what the parties were assumed to know. It was only an instance of the familiar rule that evidence was admissible, not of the parties' intention, but of the surrounding circumstances, in order to identify what the parties were contracting about and the subject-matter of the contract. His lordship referred to *Leduc* v. *Ward*, 20 Q.B.D. 475; *Glynn* v. *Margetson & Co.* [1893] A.C. 351; *James Morrison & Co., Ltd.* v. *Shaw, Savill & Albion & Co., Ltd.* [1916] 2 K.B. 783; *Hain Steamship Co., Ltd.* v. *Tate & Lyle, Ltd.*, 52 T.L.R. 617, and said that they were cases of liners or general traders; and it might be said that the same principles did not apply in the same sense to a chartered vessel carrying a single cargo for a single shipper or consignee. But even in such cases it was obvious that there would be in general various considerations, commercial or navigational, which determined what sea route was usual and reasonable. The general rule was stated by Blackburn, J., in *Grant* v. *Grant*, L.R. 5 C.P. 727, at p. 728. The question was the sense to be attributed to the words "proceed with all convenient speed from Poti to Sparrows Point." The contract voyage had to be identified; it must refer to some route or other. It could not be said

as a matter of law that the meaning was necessarily by the direct sea track. In *Frenkel* v. *MacAndrews & Co., Ltd.* [1929] A.C. 545, at p. 557, Lord Dunedin quoted from Wills, J., in *Evans Sons & Co.* v. *Cunard Steamship Co.*, 18 T.L.R. 374, the statement, that the specified voyage must be understood in a business sense, uttered by Lord Herschell in *Glynn* v. *Margetson & Co., supra.* As the necessity of using ports of call for bunkering was so obvious, he (his lordship) thought that less evidence was needed to justify that it was usual and reasonable to use a port like Constantza for that purpose than if the ship had gone there for purposes of trade. But it was not necessary to lay down any specific measure of departure from the direct sea route which might be held to be reasonable. He would go as far as this case required. The test of what was usual and reasonable in a commercial sense must arise in very different circumstances, and must be decided whenever it arose by the application of sound business considerations and by determining what was fair and reasonable in the interests of all concerned. He had found himself unable to concur in the reasons which led Slesser, L.J., and Clauson, L.J., to reverse the decision of Goddard, J. The appeal would be allowed.

The other noble lords agreed.

COUNSEL: *A. T. Miller*, K.C., and *Cyril Miller*; *G. St. C. Pilcher*, K.C., and *H. G. Willmer*, K.C.

SOLICITORS: *Botterell & Roche*; *Thomas Cooper & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Crane *v.* Hegeman-Harris Co. Inc.

Greene, M.R., Clauson and Goddard, L.JJ.
4th and 5th October, 1939.

CONTRACT—RECTIFICATION—ARBITRATION AWARD—ACTION TO ENFORCE AWARD—WHETHER DEFENDANTS PRECLUDED FROM CLAIMING RECTIFICATION OF CONTRACT.

Appeal from Simonds, J. (83 SOL. J. 315).

In July, 1935, the defendants (hereinafter called "the contractors") entered into a building agreement to erect certain exhibition buildings by certain dates for a company (hereinafter called "the owners"). The contractors were to be paid for the actual cost of materials and labour and other expenses paid in performance of the work, and also a fixed fee of £140,000 which was to cover their profit and the cost of the plans, specifications, architectural drawings and engineering plans and the salaries and expenses of persons employed at their offices in the general carrying on of their business (Art. 8). The contractors guaranteed that the total amount payable by the owners, including the fixed fee under Art. 8, should not exceed £1,209,250, and agreed that if the total cost of the work together with the fixed fee should exceed that amount, the owners should not be required to pay the excess, but the contractors would pay it; if the contractors performed the work for less than the guaranteed cost, the contractors were to be entitled only to the final cost of the work plus the fixed fee (Art. 11). In October, 1936, the plaintiff (hereinafter called "the architect") and the contractors entered into an agreement expressed to be supplemental to the building agreement, and stating that they now requested him to prepare plans and specifications. It provided for a minimum fee of £13,000 and "such a further amount (not exceeding £20,000 in all) as shall be equal to two equal seventh parts of the amount which the company shall under the terms of the building agreement receive and retain in respect of the fixed fee of £140,000 payable thereunder to the company, provided always that no sum shall be payable to the architect under this sub-clause until the company shall have received and retained £70,000 on account of the said fixed fee payable to them, but as and when any sum in excess of £70,000 shall be received and retained by the company in respect of the said fixed fee, the company shall pay over to the architect an amount equal to two equal seventh parts thereof." The contractors contended that from the £70,000, in respect of which the architect was to receive two-sevenths, there must be deducted any sum which they had to pay under Art. 11 of the building agreement in respect of the difference between the actual cost of the buildings and the sum which the owners were to pay them. The matter went to arbitration, and on construction of the supplemental agreement the arbitrator and the Court of Appeal rejected this contention. In an action by the architect to enforce the award, the contractors contended that the submission to arbitration was no real submission, on the ground that there was a fundamental mistake of fact in that the agreement referred to arbitration was not the real agreement between the parties. They accordingly sought rectification so as to give effect to the true consensus of the parties when they made the agreement. Simonds, J., held that there should be rectification. The architect appealed.

GREENE, M.R., dismissing the appeal, said that the judge's finding of fact was right. On this part of the case the appellant's argument almost amounted to saying that if there was in the evidence a contradiction which could not be explained by the attribution of lack of truthfulness to one witness or another that was enough to deprive the evidence as a whole of the irrefragable quality required. That was wrong. In a rectification case the judge was entitled to reject evidence which after full examination of the whole matter did not seem to him proper to be accepted without any question of the integrity of the witness arising. It was further said that it had been open to the respondents under the terms of the submission to arbitration to raise the question of rectification before the arbitrator and that had they done so he would have been bound to deal with that issue so that a court could not now listen to a case which fell within the terms of the submission. But the submission related to disputes which had arisen at its date with regard to a particular written document specified and identified in it, and the arbitrator's jurisdiction was confined to whatever matters relating to that document as an agreement between the parties fell within the description in the submission. The issue raised by the claim for rectification was quite different. It did not arise out of the particular written agreement but sought to substitute for it another agreement in different terms. Any attempt by the respondents to raise the issue of rectification in the arbitration proceedings could not have succeeded without some further agreement by both parties to submit that particular matter (see *Printing Machinery Co., Ltd.* v. *Linotype & Machinery, Ltd.* [1912] 1 Ch., at p. 572; 56 SOL. J. 271). It was further contended that by reason of some estoppel or quiescence the respondents were deprived of the right to raise this point now. It was said that a party in such circumstances as these was not entitled to take two bites at a cherry. But nobody in the wildest flights of metaphor would say that a person was bound to take one bite at two cherries. The issue of rectification was totally different. Nothing prevented the respondents from proceeding with the issue submitted to arbitration to its conclusion and then raising an issue outside the arbitrator's jurisdiction.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *Vos*, K.C., and *Rimmer*; *Willink*, K.C., and *E. Roskill*, for *Megaw* (serving with His Majesty's Forces).

SOLICITORS: *W. C. Crocker*; *Slaughter & May.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Brigstocke *v.* Corse-Scott.

Slesser and Luxmoore, L.JJ., and Macnaghten, J.
5th October, 1939.

MASTER AND SERVANT — DOMESTIC SERVANT — SERVICE SUBJECT TO A MONTH'S NOTICE—SERVANT ENTERING OTHER EMPLOYMENT—ACTION AGAINST SERVANT AND NEW EMPLOYERS—LIABILITY.

Appeal from Marylebone County Court.

On the 7th November, 1938, Mr. Brigstocke engaged a cook-general, aged eighteen years, on terms, confirmed in writing, that her employment should be subject to a month's notice. On the 15th December she saw Mrs. Corse-Scott with a view to entering her employment and told her of her engagement. Mrs. Corse-Scott said that she would request Mrs. Brigstocke to release her on the 29th December, but that otherwise she could wait till the 16th January, 1939. On the 16th December the girl gave her employers notice. In reply to a request from Mrs. Corse-Scott, Mrs. Brigstocke refused to release her before the 16th January. On the 22nd December the girl went to see Mrs. Corse-Scott and said that she was leaving Mrs. Brigstocke's service immediately; it was agreed that she should go into Mrs. Corse-Scott's service on the 29th December. On the 2nd January Mrs. Brigstocke went to the house of Mrs. Corse-Scott, and when the girl opened the door, said: "You know you are still engaged to me, Mary, to the 16th." The girl said: "Yes." On the 5th January Mrs. Brigstocke engaged another servant. Mr. and Mrs. Brigstocke brought an action against the girl for breach of her contract of service and against Major and Mrs. Corse-Scott for procuring or encouraging the breach and harbouring her. His Honour Judge Woodcock, K.C., held that, though the girl was an infant, the contract was enforceable against her as being beneficial. He held that the other defendants were not guilty of procuring or encouraging her breach of contract but that they were guilty of harbouring her from the 22nd December till the 5th January. He assessed the damages at £25, and awarded £4 against the girl and £21 against the other defendants, saying that he understood that there was a custom that the damages for breach of a contract of service for which the servant was liable should not exceed the wages payable under the contract. The defendants appealed.

SLESSER, L.J., said that he knew no custom as to the limitation of a servant's liability such as the judge had mentioned, but that the judge had limited the damages against the girl to £4. The torts of procuring and harbouring were distinguishable, but both were based on the Statute of Labourers in the time of Edward III. The principle of the statute was of general application: *Lumley* v. *Gye*, 2 E. & B. 216. Here the harbouring, in fact, began on the 29th December, and the girl was released as from the 5th January when the plaintiffs obtained another maid. It had been contended for the plaintiffs that the judge was wrong in holding that there was no procurement. The girl's obligation to serve was a continuing one, and while it continued Mrs. Corse-Scott, knowing the circumstances, arranged for her to enter her service on the 29th December. The only inference of fact which the court could draw was that there was procurement on the 22nd December. The combined effect of this and of the harbouring supported the damages awarded. The appeal should be dismissed.

LUXMOORE, L.J., and MACNAGHTEN, J., agreed.

COUNSEL: *Hanworth; H. Edmunds.*

SOLICITORS: *Barfield, Child, Barry, Lucas & Sons; Samuel Coleman.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Chipchase *v.* Chipchase.

Sir Boyd Merriman, P., and Henn Collins, J.
21st July, 1939.

HUSBAND AND WIFE—SUMMONSES ON CHARGES OF ADULTERY, DESERTION AND WILFUL NEGLECT TO MAINTAIN—PRESUMPTION OF DEATH OF FORMER HUSBAND—SEVEN YEARS' ABSENCE—DEFENCE OF IRREGULARITY OF BANNS—INTENTIONAL CONCEALMENT OF IDENTITY—WEIGHT TO BE GIVEN TO EVIDENCE—CASE REMITTED.

This was an appeal by the wife from the refusal of the Hendon Justices to grant her a maintenance order on summonses against her husband on the grounds of adultery, desertion and wilful neglect to maintain. In 1915 the wife married a man named Leetch, who thereafter soon deserted her, and she stated she had neither seen nor heard of him since 1916. In 1928 she went through a ceremony of marriage with the present respondent, preceded by banns for the purpose of which the wife gave her maiden name. The justices dismissed the summonses on two grounds, (1) that the marriage to Leetch had not been proved not to be subsisting, and (2) that there had been no due publication of banns of the marriage to the respondent. The Divisional Court remitted the case for a rehearing on both these points.

Sir BOYD MERRIMAN, P., in giving judgment, said that on the face of the wife's evidence, she had not heard of her husband for more than seven years at the time when she went through the ceremony of marriage with the man whom she is now charging as her husband; in fact, twelve years or thereabouts had elapsed at the time of the second ceremony of marriage. It was quite true that she was asked questions about the nature of the inquiries she had made, opportunities she had of inquiring from his relatives, and so forth, but her evidence was that she had not heard of her husband from the moment already referred to, at the beginning of 1916, and had no idea whether he was dead or alive. The justices had given their decision expressly on the ground that, there being no evidence that Leetch was dead, they were of opinion that the first marriage was still subsisting. It seemed to him, his lordship, impossible to say that there was no evidence that Leetch was dead, having regard to the presumption of law which arose in the judgment of Sir G. M. Giffard, L.J., *vide Re Phene's Trusts* in (1870), L.R. 5th App. Cas. 139, at p. 144. Once it was shown that the wife had not heard of her husband for seven years that presumption arose. It was not, of course, an irrebuttable presumption, and it might take very little evidence to rebut it having regard to the particular circumstances of a particular case, but, if that proposition were established affirmatively to the satisfaction of the justices, then it was impossible to say there was no evidence of a husband having been dead. It was in that direction that the question of the nature of any inquiries that the wife had made arose. He, his lordship, did not feel that that approach to the matter had been considered by the justices at all. His lordship added it was very necessary to distinguish the consideration of the presumption discussed above from the considerations which applied to s. 8 of the Matrimonial Causes Act, 1937. Under that section once the spouse had satisfied the court that there was reasonable ground for supposing the party to be dead within the terms of the section, the marriage might be dissolved, and once the decree absolute had been pronounced, it was completely irrelevant whether the party was afterwards shown to have been alive at the material time or not. In connection with the presumption under discussion, if it were shown that the husband were alive, the second marriage might be declared null and void at any time.

The justices had also decided that the second marriage was not valid and subsisting on the ground that there was no due publication of the banns. They found that the wife gave her wrong name intentionally and wilfully, and that there was no due publication of banns. They therefore held that the marriage was void to all intents and purposes. The question was whether the misuse of her maiden name did bring about that result. It might be that it did, but he, his lordship, was not satisfied that the justices' minds had been directed to the real question. Evidence was given that for two years at any rate before this marriage the wife had been commonly known by her maiden name. The justices had not had their minds directed to the established interpretation of the Marriage Act, 1823, s. 22, on which the

question depended. The wording of the Act was: "Provided always, that if any persons shall . . . knowingly and wilfully intermarry without due publication of banns or licence . . . the marriages of such persons shall be null and void to all intents and purposes whatsoever." It was required by s. 7 that the true christian name and surname shall be given to the parson for the purpose of publication of banns. Their lordships' attention had been called to *R.* v. *Tibshelf* (*Inhabitants*) (1830), 1 B. & Ad. 190, and *R.* v. *Wroxton* (*Inhabitants*) (1833), 4 B. & Ad. 640, which showed quite plainly that the words "knowingly and wilfully" were deliberately introduced into s. 22 of the Act of 1823 in order to mitigate the hardship which had arisen under the earlier Act and was exemplified by the case of *R.* v. *Tibshelf* (*Inhabitants*), *supra*, that it was quite immaterial whether the falsity in the declaration had arisen by accident or design and whether such design be fraudulent or not. In *R.* v. *Wroxton* (*Inhabitants*), *supra*, Denman, C.J., cited with approval the case of *Wiltshire* v. *Prince* (1830), 3 Hag. Ecc. 332, decided in the Ecclesiastical Courts after the Act of 1823 had passed, in which Dr. Lushington expressly founded his judgment of nullity on the fact that both the man and woman were aware that banns had been published in a manner calculated to conceal the identity of one of the parties. The same appeared even more emphatically in the judgment of Sir H. Jenner Fust, in *Orme* v. *Holloway* (1847), 5 Notes of Cases 267, where he said the construction of the Act was that, in order to set aside a marriage on the ground of undue publication of banns, it was necessary for both the parties to be cognisant of fraud; it was necessary first to prove that there had been a fraud and secondly that both parties were cognisant of the fraud and knowingly and wilfully entered into the marriage without due publication of banns. Other authorities, such as *Midgley* (*falsely called Wood*) v. *Wood* (1859), 4 S.W. & Tr. 267, were to the same effect. The object of the Act was to prevent clandestine marriages; there must be an element of intentional concealment of identity before it could be said that a marriage was void for undue publication of banns. He, his lordship, did not think that that element of the matter had been sufficiently considered by the justices. The wife must be given the opportunity of establishing, if she is able, that the name in which she was married was the name by which for years she had been commonly known, and that there was no intention to conceal her identity.

HENN COLLINS, J., delivered a concurring judgment.

COUNSEL: *H. J. Phillimore*, for the appellant wife; *Stuart Horner*, for the respondent husband.

SOLICITORS: *Longfields, Halse & Trustram; Edgar H. Hiscocks.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Solicitors' Benevolent Association.

Notice is hereby given that the adjourned annual general meeting of the members of the Association will be held at 60, Carey Street, Chancery Lane, London, on Wednesday, the 8th November, 1939, at 2.15 p.m., when the board will present their report. Directors and Auditors for the ensuing year will be elected, and other general business transacted.

The monthly meeting of the Directors was held at 60, Carey Street, Chancery Lane, London, on Wednesday, the 11th October. Mr. Harvey F. Plant, M.C., was in the chair, and the following Directors were present: Mr. H. White, M.A., Vice-Chairman (Winchester), Mr. G. L. Addison, Mr. Ernest E. Bird, Mr. G. S. Blaker (Henley), Mr. W. E. M. Blandy, M.A. (Reading), Mr. P. D. Botterell, C.B.E., Mr. R. Bullin, T.D., J.P. (Portsmouth), Mr. A. J. Cash (Derby), Mr. T. G. Cowan, Mr. C. H. Culross, Mr. T. S. Curtis, Sir Norman Hill, Bart., Mr. C. G. May, Mr. L. F. Paris (Southampton), and Mr. R. B. Pemberton. The sum of £2,258 was distributed in grants to necessitous cases and fifty-nine new members were admitted.

War Legislation.

(*Supplementary List, in alphabetical order, to those published in* THE SOLICITORS' JOURNAL, *dated September 16th, 23rd and 30th, also October 7th and 14th.*)

Progress of Bills.

House of Commons.

Local Elections and Register of Electors (Temporary Provisions) Bill.
Read Third Time. [19th October.

Prices of Goods Bill.
Read Second Time. [19th October.

Statutory Rules and Orders.

No. 1359. **Building Society** Rules, dated October 9.

No. 1403. **Contributory Pensions** (Joint Committee) Regulations, dated September 28.

No. 1386. **Customs.** Export Licences. Open General Export Licence for certain Goods, dated October 7.

No. 1385. Customs. Export Licences—Road Vehicles. Open General Export Licence for certain Road Vehicles, dated October 7.

No. 1392. **Emergency Powers (Defence).** The Control of Flax (No. 4) Order, dated October 7.

No. 1393. Emergency Powers (Defence). The Control of Molasses and Industrial Alcohol (No. 2) Order, 1939. Direction No. 1, dated October 8.

No. 1394. Emergency Powers (Defence). The Control of Molasses and Industrial Alcohol (No. 3) Order, 1939, dated October 8.

No. 1405. Emergency Powers (Defence). The Control of Rubber Boots (No. 1) Order, dated October 12.

No. 1416. Emergency Powers (Defence). Order in Council, dated October 13, amending the Defence Regulations, 1939.

No. 1404. Emergency Powers (Defence). The Defence (Finance) (No. 2) Regulations (Isle of Man), 1939, Order in Council, dated October 13.

No. 1415. Emergency Powers (Defence). The London Traffic (Slow-Moving Traffic) Order, dated September 29.

No. 1420. Emergency Powers (Defence). The Petroleum (No. 1) Order, dated October 12.

No. 1421. Emergency Powers (Defence). Order, dated October 13, amending the Pigs (Provisional Prices) Order, 1939.

No. 1429. Emergency Powers (Defence). Order, dated October 13, amending the Pigs (Provisional Prices) (Northern Ireland) Order, 1939.

No. 1398. Emergency Powers (Defence). The Public Service Vehicles (Drawing of Gas-Producer Trailers) Order, dated September 29.

No. 1423. Emergency Powers (Defence). Road Traffic. The Wilton Bridge (Speed Limit) Order, dated September 23.

No. 1406. Emergency Powers (Defence). Road Vehicles. The Standing Passengers Order, dated September 26.

No. 1397. Emergency Powers (Defence). The Road Vehicles (Tyres of Land Tractors) Order, dated September 28.

No. 1419. **Food, Minister of.** The Ministers of the Crown (Minister of Food) (No. 2) Order in Council, dated October 13.

No. 1399. **Road Traffic and Vehicles.** The Motor Vehicles (Authorisation of Special Types) Order, dated September 29.

No. 1388/S. 100. **Session, Court of, Scotland.** Procedure. Act of Sederunt, dated September 11, regulating Proceedings under the Administration of Justice (Emergency Provisions) (Scotland) Act, 1939.

No. 1390. **Trading with the Enemy.** Freights. General Licence, dated October 9.

Provisional Rules and Orders.

National Health Insurance (Joint Committee) Regulations, dated September 28.

Circulars, etc.

Stationery Office.

List of Emergency Acts and Statutory Rules and Orders issued and in the press. Revised to October 11, 1939. (An Index to the numerous Regulations made under the Civil

Defence Act and other War legislation. The regulations are grouped under the subject to which they relate.)

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed His Honour Judge DAVID DAVIES, K.C., to be the Judge of Bloomsbury Court (Circuit 42) in the place of His Honour Judge Sir Stanley Hill Kelly, who has retired. The appointment is to take effect on the 23rd October.

Mr. W. MARSHALL COUPE, Clerk and Solicitor to Tyldesley (Lancs) Urban District Council, has been appointed Clerk to Newton-le-Willows Urban District Council, in succession to Mr. D. H. Warren, who has been appointed Town Clerk of Slough.

Notes.

The Registrar General gives notice that all applications by post for certificates of births, deaths or marriages, and correspondence relating thereto, should be addressed to The General Register Office, New Cumberland Hotel, North Parade, Blackpool. The public Search Room will continue at Somerset House, Strand, W.C.2.

Practice Note.

IN THE HIGH COURT OF JUSTICE.
PROBATE, DIVORCE AND ADMIRALTY DIVISION.

CONSENT BY THE CUSTODIAN OF ENEMY PROPERTY TO GRANTS OF REPRESENTATION.

The consent in writing of the Custodian of Enemy Property, whose office is situate at that of the Public Trustee, Kingsway, London, W.C.2, must be obtained and produced before a Grant of Representation can issue :—

(1) In respect of the estate of a deceased person of whatever nationality who was resident in enemy territory, such territory being defined by Section 15 (1) (*b*) of the Trading with the Enemy Act, 1939 ;

(2) In respect of the estate of a deceased German national, who was resident in neutral territory ;

(3) To a German national residing in neutral territory in respect of the estate of any deceased.

Such consent is necessary whether the deceased died before or after the outbreak of War.

No Grant of Representation can issue to any person resident in enemy territory as defined by the aforesaid Act or to his attorney.

Any case in which there is doubt should be referred to the Custodian of Enemy Property for his decision as to the necessity for his consent.

H. F. O. NORBURY,
Senior Registrar.

18th October, 1939.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Oct. 23	Reader	Andrews	Blaker
,, 24	Andrews	Jones	More
,, 25	Jones	Ritchie	Reader
,, 26	Ritchie	Blaker	Andrews
,, 27	Blaker	More	Jones
,, 28	More	Reader	Ritchie

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE SIMONDS. Witness.	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE MORTON. Witness.
	Mr.	Mr.	Mr.	Mr.
Oct. 23	Jones	Reader	More	Ritchie
,, 24	Ritchie	Andrews	Reader	Blaker
,, 25	Blaker	Jones	Andrews	More
,, 26	More	Ritchie	Jones	Reader
,, 27	Reader	Blaker	Ritchie	Andrews
,, 28	Andrews	More	Blaker	Jones

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (28th September 1939) 3%. Next London Stock Exchange Settlement, Thursday, 26th October, 1939.

	Div. Months.	Minimum Price 18 Oct. 1939.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	100⅝†	3 19 5	3 19 0
Consols 2½%	JAJO	66⅞†	3 14 10	—
War Loan 3½% 1952 or after	JD	91½†	3 16 6	—
Funding 4% Loan 1960-90	MN	101⅛†	3 18 8	3 17 8
Funding 3% Loan 1959-69	AO	88½†	3 7 10	3 12 11
Funding 2¾% Loan 1952-57	JD	89†	3 1 10	3 11 11
Funding 2½% Loan 1956-61	AO	83†	3 0 3	3 13 5
Victory 4% Loan Av. life 21 years	MS	102¼†	3 18 3	3 16 10
Conversion 5% Loan 1944–64	MN	105⅜†	4 14 6	3 8 9
Conversion 3½% Loan 1961 or after	AO	90½†	3 17 4	—
Conversion 3% Loan 1948-53	MS	94⅝†	3 3 5	3 10 6
Conversion 2½% Loan 1944-49	AO	93½	2 13 8	3 6 10
National Defence Loan 3% 1954-58	JJ	92½†	3 5 0	3 11 4
Local Loans 3% Stock 1912 or after	JAJO	78†	3 16 11	—
Bank Stock	AO	302½†	3 19 4	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	70½†	3 18 0	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	77½†	3 17 5	—
India 4½% 1950-55	MN	101¾xd	4 8 5	4 5 11
India 3½% 1931 or after	JAJO	80†	4 7 6	—
India 3% 1948 or after	JAJO	68½†	4 7 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	103	4 7 5	4 6 3
Sudan 4% 1974 Red. in part after 1950	MN	98xd	4 1 8	4 2 3
Tanganyika 4% Guaranteed 1951-71	FA	100	4 0 0	4 0 0
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	101	4 9 1	4 0 0
Lon. Elec. T. F. Corpn. 2¼% 1950-55	FA	83	3 0 3	3 19 1
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	88½†	4 10 5	4 14 4
Australia (Commonw'th) 3% 1955-58	AO	71†	4 4 6	5 10 0
*Canada 4% 1953-58	MS	103⅞†	3 17 1	3 12 9
Natal 3% 1929-49	JJ	90½†	3 6 4	4 7 3
New South Wales 3½% 1930-50	JJ	83½†	4 3 10	5 10 10
New Zealand 3% 1945	AO	82†	3 13 2	7 0 9
Nigeria 4% 1963	AO	98	4 1 8	4 2 8
Queensland 3½% 1950-70	JJ	80	4 7 6	4 15 4
South Africa 3½% 1953-73	JD	90¾†	3 17 1	4 0 0
Victoria 3½% 1929-49	AO	82¾†	4 4 7	5 16 6
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	73	4 2 2	—
Croydon 3% 1940–60	AO	83½	3 11 10	4 4 9
Essex County 3½% 1952-72	JD	95½	3 13 4	3 14 10
Leeds 3% 1927 or after	JJ	75	4 0 0	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	86¼	4 1 2	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	59	4 4 8	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	72†	4 2 2	—
Manchester 3% 1941 or after	FA	73½†	4 1 8	—
Metropolitan Consd. 2½% 1920-49	MJSD	92	2 14 4	3 9 2
Metropolitan Water Board 3% "A" 1963-2003	AO	72†	4 3 4	4 5 9
Do. do. 3% "B" 1934-2003	MS	75†	4 0 0	4 2 4
Do. do. 3% "E" 1953-73	JJ	84	3 11 5	3 17 1
*Middlesex County Council 4% 1952-72	MN	101	3 19 2	3 18 0
* Do. do. 4½% 1950-70	MN	103¾	4 6 8	4 1 4
Nottingham 3% Irredeemable	MN	74½	4 0 6	—
Sheffield Corp. 3½% 1968	JJ	93	3 15 3	3 18 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS		Middle Price.		
Gt. Western Rly. 4% Debenture	JJ	93⅛	4 5 7	—
Gt. Western Rly. 4½% Debenture	JJ	102½	4 7 10	—
Gt. Western Rly. 5% Debenture	JJ	112½	4 8 11	—
Gt. Western Rly. 5% Rent Charge	FA	106	4 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	99½	5 0 6	—
Gt. Western Rly. 5% Preference	MA	80	6 5 0	—
Southern Rly. 4% Debenture	JJ	93⅛	4 5 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 0
Southern Rly. 5% Guaranteed	MA	105	4 15 3	—
Southern Rly. 5% Preference	MA	80	6 5 0	—

* Not available to Trustees over par.
† Market price.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.